

Minutes  
of the  
Oyster Lease Damage Evaluation Board  
February 20, 2002

A meeting of the Oyster Lease Damage Evaluation Board was held on Wednesday, February 20, 2002, at 10:00 a.m. at the Barataria Restaurant, 900 Harrison Avenue, New Orleans, Louisiana. The notice and agenda for the meeting are attached.

The meeting was called to order by Judge Vivian Guillory.

Board members present:

Vivian B. Guillory, ALJ, Chairman

Don Briggs, LIOGA representing LIOGA, Mid-Continent Oil and Gas Assn., and Louisiana Landowners Assn.

Ralph V. Pausina, representing the Louisiana Oyster Dealers & Growers Assn.

Board members absent:

Philip E. Boyston, Burlington Resources, representing LIOGA, Mid-Continent Oil & Gas Assn., and Louisiana Landowners Assn.

Mike Voisin, Motivat Seafood, representing the Louisiana Oyster Task Force

DNR Staff present:

Katherine Vaughan, Deputy Secretary

Hope Harriman, Executive Services Assistant

Others present:

Mr. Richard Waldron, Robert P. Waldron, Inc.

Mr. Don Kilgren, Kilgren Environmental Services

Mr. Ed Cake, Gulf Environmental Associates

Mr. John Cirino, Cirino Consulting Services

Mr. Brad Robins, Robins Systems

Mr. Mike Rayle, E & E Group

Dr. Maureen Mulino, E & E Group

Mr. Brad Brodtmann, Environmental Professionals Limited

Ms. Clara Cowan, Paralegal, Division of Administrative Law

Mr. Patrick Banks, Department of Wildlife & Fisheries

A quorum being present, the meeting began with an annual review of biologists for certification. A list of certified biologists was presented to the Board. On motion made, seconded and passed unanimously, the certified biologists listed on the attachment to these minutes were certified for 2002. Judge Guillory asked that all the biologists to review their addresses and e-mail addresses. Ms. Vaughan asked that any changes to the biologists' information be sent to Hope Harriman's e-mail address, which was listed on the materials distributed at the meeting. Judge Guillory asked if there were any additional applications for the Board for additional certified biologists and there were none.

A presentation was made to the Board by Ms. Vaughan on the information placed on LDNR's website. Ms. Vaughan stated that the information for the Board on LDNR's website has been expanded and the following information can now be accessed: list of certified biologists, OLDEB members, statutes, forms, and OLDEB regulations. Ms. Vaughan advised that DNR's new phone and fax numbers and new address are on the website.

Judge Guillory reported on pending Board proceedings. Judge Guillory had a telephone conference with Westfield Oil and Gas on January 31, 2002, and was advised that it has legal issues pending before the Supreme Court and it has not completed the work it had originally anticipated doing. The Cockrell matter is on appeal. The Board does not have any other hearings set or pending matters.

Expenses of the Board were discussed. Ms. Vaughan explained that all the costs are being borne by DNR and staffed by DNR, or through the Division of Administrative Law. She advised the Board that

funding is a continuing problem because the Board does incur costs. Ed Cake questioned if the legislature says no to the funding or DNR. Ms. Vaughan responded that DNR has annually submitted budget requests for funding for the Board, but in the past and for the current year these requests for funding have been eliminated, and have not been reinstated in the budget review process. Mr. Don Briggs asked what DNR has requested in the budget. Ms. Vaughan stated that the requests are modest, for part of the salary for staffing, costs for court reporters and transcripts, fees for Division of Administrative Law, and funding for travel expenses.

The last issue on the agenda discussed was uniform evaluation methods. The statute provides the Board shall engage experts to assist the Board in establishing an evaluation method to be followed by a certified biologist to determine the quality, condition and value of the oyster beds before the oil and gas activity takes place and to determine the estimated damages or loss to leaseholders after activity is completed.

Mr. Pausina stated that when the Board promulgated the methods, the Board had adopted methods but planned to come back to these methods at a later date. Mr. Pausina added this item to the agenda so the Board could reexamine discount numbers it uses on the second and third year crops. He requested the opinion from the certified biologists present on their views about the current methodologies, and for their opinions on whether the method should be revised. Judge Guillory clarified that this request relates to compensation for damages to living oyster resources. Mr. Pausina agreed.

A general discussion by the biologists followed. Mr. Cake said that his associates have discussed the 10% survival and 50% survival for a number of years and are uncomfortable with the 90% loss of spat that he measures in the field. He recognizes that probably more than 90% are lost as very small spat. By the time they can see and measure them at ½ inch to an inch, it is his opinion many more than 10% will survive. We would be comfortable with 25% survival and 75% loss at that level from ½ inch to 1 inch when they have good shells on them. On the seed oyster status, he is uncomfortable with the 50% loss because it is his opinion that in a matter of a year to six months those seed oysters which are already 1 to 3 inches, more than 50% survive. He would be comfortable with 75% survival and 25% loss. He suggests that the biologists go back in the literature and look at some additional scientific data and monitor some oyster mortality data to see what the actual figures are.

Judge Guillory asked for other comments. Mr. Kilgren stated he agreed with the comment that there should be more research on these issues. Judge Guillory suggested that the Board set up a timetable for some research to be done for biologists to make comments to the Board.

Mr. Pausina stated that oysters have been researched for years and that the biologists are experts who should be able to come up with the figures needed. Judge Guillory verified that the biologists had copies of the methodologies, and asked how much time they needed to get back with the Board with recommendation on these figures and questions.

Mr. Cirino suggested that other areas be opened for review and comments, and also that it be a work in progress. He suggested a workshop.

Mr. Rayle said that he does not believe that there is a magic number as far as the count on mortality for seed or spat oysters, and this varies from 0-100% depending on habitat.

Mr. Waldron felt the current numbers are not arbitrary but based on Wildlife and Fisheries data and the numbers Wildlife and Fisheries is using. His opinion is that while 10% might be a little low, but he surely disagrees with 25%, Dr. Cake proposed, and based on Wildlife and Fisheries findings and his own findings the current guidelines aren't disproportionate.

Mr. Pausina thanked the biologists for their openions.

Ms. Vaughan added that leaseholder records, contextual information on leases and other pertinent information such as storm events and similar data which can impact oyster mortality, can be considered by the Board, in addition to the guidelines, and the Board also does have other parameters to factor in to estimates and awards for damage compensation.

Mr. Briggs brought up the workshop and questioned who would put on the workshop, who would attend, and what would be accomplished. A general discussion followed about workshops.

Ms. Vaughan asked if there were any reliable scientific studies that had been done since the methods were originally adopted by the Board that would provide new scientific information justifying revisions to mortality data on living oyster resources.

Mr. Cirino thought the biologists should send in what they want the Board to review at a workshop and suggested then the Board could have workshop to discuss the changes, or topics that the biologists sent in.

Mr. Rayle said that he had two items that came to mind. 1. The Sidescan Sonar. 2. Population Modeling Studies. He thought that bombarding the Board with all kinds of scientific information would not be good.

Mr. Cirino suggested that the biologists present data to DNR and let DNR distribute it to the Board, to see if there is any substantial data to support a change in mortality data to living oyster resources.

A discussion followed about Board hearings. Mr. Scultz stated that unless he is involved in a claim he is left in the dark on how these claims are handled, who does the procedures, how are they applied and asked if there are any ways to get this information. Judge Guillory stated that the Board has had three sets of hearings come before it. She agreed that this is an interesting point and she suggested that she could notify everyone when DAL holds a hearing. Ms. Vaughan stated that DNR is posting the notices on its website and interested parties can now access the notices on DNR's website. She stated

that usually 70 to 80% of the cases are not going to hearing. It appears that most of the cases are settling. She also stated that the records are available if transcripts are requested, and all hearings are open to the public. Judge Guillory stated that the e-mail addresses would help and having the hearing notices available on the website will help. Mr. Waldron suggested that the Board give the biologists feed back after the hearings. Ms. Vaughan pointed out that the Board cannot comment on a case that is under review by the Board or pending on appeal.

Returning to the agenda, Mr. Pausina recommended the evaluation methods should be periodically looked at. Mr. Waldron felt it should not be an open ended suggestion for change, and any change should have support and be reviewed by biologists and industry representatives. Mr. Cake made a suggestion to have the Board meetings in New Orleans because it is closer for the biologists and members.

Mr. Briggs stated that if the certified biologists have an issue or something that they feel needs to be addressed by the Board on the Board's process or the evaluation of the oysters, they need to notify the Board in writing with information that supports the change. If the Board collects several of these suggestions, and if it feels it is desirable, it can hold a meeting or workshop. He indicated the Board is open for suggestions, but biologists must have some backup and science behind any proposal. A presentation or new technology such as side-scan sonar might be presented at the same meeting if the Board deems appropriate.

Judge Guillory suggested the biologists get together and discuss these issues among each other before coming before the Board. She suggested that if they did this, they would carry more weight with the Board.

The Board gave the biologists 30 days to send the recommendation on mythology to reevaluate second and third year living oyster resources mortality or other suggestions in writing to Katherine Vaughan at DNR and asked her to distribute any comments received to everyone present. The Board decided to hold another meeting to discuss these proposals. Mr. Briggs asked the Wildlife and Fisheries representative if the agency has any studies that might be helpful in this process, please present them to the Board.

There being no further business, on motion duly made and seconded, the Board adjourned.